

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT

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**DEFENDANT GHASSAN BALLUT'S MEMORANDUM IN OPPOSITION  
TO THE UNITED STATES MOTION IN LIMINE NO. 4**

The Defendant, GHASSAN BALLUT, by and through his undersigned counsel, hereby responds in opposition to the United States' Motion in Limine No. 4 to Preclude Evidence (Dkt. 978) and the Memorandum of Law in Support (Dkt. 979). The United States' Motion seeks in pertinent part to "exclude evidence offered to establish an underlying basis for the legitimacy, merits, or reasonableness of the political, religious, and moral beliefs and goals of the defendants." Dkt. 978, 1. The United States brings its Motion in anticipation "that the defendants will seek to introduce evidence to establish the legitimacy and reasonableness of their political, religious, or moral beliefs and goals as part of their defense at trial" and "to either negate a finding of their criminal intent or justify their conduct by establishing their 'good motive.'" Dkt. 978, 3; Dkt. 979, 2. The legal basis for the Motion is that such evidence "is both irrelevant under Rule 402 and inadmissible under Rule 403." Dkt. 978, 4.

The United States' Motion appears to be based on the presumption that the Defendant is guilty of involvement in the activities of the Palestinian Islamic Jihad (PIJ) "enterprise" as alleged in Count I of the Superseding Indictment and that the Defendant can advance only affirmative defenses such as justification or necessity against this allegation, as indicated in the United States'

Motions in Limine Nos. 1, 2, and 3 (Dkt. 972, 974, and 976). The United States further presumes that the Defendant will attempt to show that the reasonableness of his beliefs justify disagreement with the laws under which he is charged. One of the Defendant's legitimate and viable defenses, however, is that the evidence and the lack of evidence demonstrate that Defendant is not involved in PIJ activities and that any actions and words ascribed to him in the Overt Acts of Count I and elsewhere in the Superseding Indictment have innocent and legitimate explanations. Further, in defending himself against these charges, the basis for the Defendant's beliefs is crucial to the coherence and credibility of his defenses.

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401. At a criminal trial, the defendant must not only be permitted to introduce evidence directly pertaining to any of the actual elements of the charged offense or an affirmative defense, but must also be permitted to introduce evidence pertaining to collateral matters that, through a reasonable chain of inferences, could make the existence of one or more of the elements of the charged offense or an affirmative defense more or less certain. United States v. Hurn, 368 F.3d 1359, 1363 (11 th Cir. 2004). More pertinent to this issue, a defendant has the right to introduce evidence that is not itself tied to any of the elements of a crime or affirmative defense, but that could have a substantial impact on the credibility of a witness, or evidence that, while not directly or indirectly relevant to any of the elements of the charged events, nevertheless tends to place the story presented by the prosecution in a significantly different light, such that a reasonable jury might receive it differently. Id. A district court's exclusion of a defendant's evidence in these circumstances violates the defendant's

right to due process guarantees. Id.

The United States' Motion contradicts arguments and assertions previously made by the United States in the prosecution of this case. The United States has repeatedly taken the position that the political, religious, and moral beliefs and goals of the defendants are in fact relevant to a determination of the allegations in the Superseding Indictment. The United States is prepared to present evidence that the defendants' political, religious, and moral beliefs comport with those of the PIJ to establish affinity. For example, the United States has listed as evidence a document purported to be the written Manifesto of the PIJ that defines those beliefs, and therefore the United States has indicated that such evidence is relevant to a determination of this action. As another example, the United States has discovered to the defendants and is prepared to introduce translations of wall posters, purportedly published or authorized by the PIJ, stating political and religious positions along with evidence suggesting that the individual defendants subscribed to the sentiments on these posters, making such translations admissible notwithstanding the hearsay rule as admissions by a party-opponent, being statements "of which the party has manifested an adoption or belief in its truth." Fed. R. Evid. 801(d)(2)(B). Clearly, the United States finds evidence of the defendants' beliefs to be relevant and admissible when such evidence aids the prosecution of these charges.

As yet another example specific to the Defendant, the PIJ is described in documents provided by the United States as opposing "moderate Arab governments that it believes have been tainted by Western secularism." United States Department of State, Patterns of Global Terrorism 2003, April 2004, p.130. It also appears that the United States intends to introduce the testimony of expert witnesses on this point. The United States further seeks to introduce evidence of a

speech made by the Defendant on September 29, 1991, in which he criticized the government of Saudi Arabia, in part to show that he subscribed to this same position of the PIJ and therefore had an affinity to the PIJ's political goals. See Overt Act 9, Superseding Indictment 18. The United States therefore appears to take the position that the Defendant's "political, religious, and moral beliefs and goals" are in fact relevant to the facts that are "of consequence to the determination of the action." The Defendant should be allowed to present relevant evidence that, because of his background and his religious, political, and moral beliefs, he came to an independent conclusion about the government of Saudi Arabia and then exercised his First Amendment right to promulgate these same political views to others. The United States, however, seeks on the grounds of relevance to prevent the Defendant from introducing evidence that counters evidence the United States deems relevant.

The United States acknowledges that "the fact and nature of the defendants' political or other beliefs, goals and objectives may be relevant to the jury's determination of their intent." Dkt. 979, 3. The Court has previously ruled that in order to convict the defendants under 18 U.S.C. § 2339B(a)(1) for providing material support to a Foreign Terrorist Organization (FTO), the United States is required to prove beyond a reasonable doubt that the defendants knew that the organization was an FTO or had committed unlawful activities and that what was being furnished was in fact "material support." Order of March 12, 2004, Dkt. 479, 24-25. The defendants' scienter and intent in collecting and transmitting funds are therefore at issue in this case. In seeking to exclude the defendants' evidence of their legitimate scienter and intent, the United States in its supporting memorandum labels such evidence as "evidence of 'good' motive" that "does not negate criminal intent." Dkt. 979, 9. The evidence will show that the defendants'

“motive” is inextricably intertwined with their intent and knowledge, and therefore such evidence is highly relevant to a determination of this issue.

In support of the allegations that the Defendant was providing material support to FTO’s, the United States intends to introduce evidence that the Defendant sent various amounts of money and other items to persons overseas. To counter this evidence, the Defendant, a Muslim, may present evidence that such money and items were collected and sent out of charitable and humanitarian motives based upon the Defendant’s politically based sympathy for the economic plight of the Palestinian people or upon the Defendant’s strongly held religious and moral beliefs, including the Islamic belief and tradition of *zakat*. Such evidence of motive would tend to demonstrate that the Defendant did not act to support an FTO, and therefore such evidence makes the existence of facts that are of consequence to the determination of this action more probable than it would be without the evidence. In presenting explanatory evidence in defense of innocent and legitimate acts, it would be impossible for the Defendant to extricate his political, religious, and moral beliefs from any purposeful conduct in sending money or materials to other persons or entities for charitable or humanitarian purposes. The United States by this motion seeks to hamper the Defendant in the presentation of legitimate and supportable defenses by preventing the Defendant from introducing evidence of his political, religious, and moral beliefs.

Most of the cases cited by the United States in its supporting memorandum (Dkt. 979) are not applicable to the legitimate defenses the Defendant may wish to present. In some of these cited cases, defendants sought to justify or excuse illegal conduct on the basis of strongly held beliefs. For example, in United States v. Warledo, 557 F.2d 721 (10th Cir. 1977), the defendants attempted to justify acts of extortion with evidence that an organization (with which the

defendants had a doubtful connection) had a lawful claim to certain property. Warledo, 729-730. In United States v. Rahman, 189 F.3d 88 (2d Cir. 1999), the defendant sought to introduce expert testimony about “a Muslim’s necessity to engage in jihad” and the role of an Islamic cleric in advising his congregants on this subject; the exclusion of this evidence was upheld. Rahman at 135. Such cases should have no effect on the Defendant’s ability to explain his conduct with evidence that his intent inherent to his legitimate and innocent acts of contributing to a charitable or humanitarian effort had a political, religious, or moral basis.

The evidence will show that the Defendant was actively and personally involved in various capacities over several years with the Al-Qassam Mosque and the Chicago Islamic Center, Inc., including participation in events in which money was raised for charitable purposes, principally from the mosque’s congregants. To explain the circumstances of these money-raising efforts, the Defendant would necessarily be required to present facts showing his connection and involvement with a religious organization. If the United States’ Motion were granted, the Defendant’s ability to introduce evidence of these circumstances would be severely hampered to the point that his ability to present an adequate defense would be unduly impaired.

Because the granting of the United States’ Motion in Limine No. 4 would violate the Defendant’s due process right to present relevant evidence in his defense, the Defendant requests that the United States’ Motion in Limine No. 4 be denied.

Respectfully submitted,

/S Bruce G. Howie

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**Certificate of Service**

I HEREBY CERTIFY that on May 4, 2005, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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